

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARWIN CRABTREE,

Plaintiff,

v.

COUNTY OF BUTTE, et al.,

Defendants.

No. 2:20-cv-0675-KJM-KJN

ORDER ON MOTION TO COMPEL

(ECF No. 39)

Presently before the court¹ is plaintiff Darwin Crabtree's motion to compel the production of a memo withheld by defendant County of Butte ("the County") on the grounds that the document is protected from disclosure by the work product doctrine, the deliberative process privilege, or both. (ECF No. 39.) The parties previously filed a joint statement regarding the discovery disagreement (ECF No. 41), and the court independently reviewed the memo in-camera. The court heard remote arguments on the motion on December 10, 2020. (ECF No. 43.) Brandt Silver-Korn appeared for plaintiff; and Stephen Horan and Matthew Gross appeared for defendant the County of Butte. For the following reasons, the court GRANTS IN PART and DENIES IN PART plaintiff's motion.

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¹ This matter was referred to the undersigned pursuant to Eastern District of California Local Rule 302(c)(1) and 28 U.S.C. § 636(b)(1).

BACKGROUND

A. The Underlying Action

This discovery dispute arises in plaintiff's 42 U.S.C. § 1983 action seeking to hold the County, and certain County employees, civilly liable for the conduct and policies that led to his wrongful conviction. In 1991, plaintiff was convicted in California state court of several counts of sexually abusing two of his sons. (ECF No. 1 at 2, 23.) The Butte County District Attorney's Office ("the DA's Office") led the prosecution, allegedly based on false accusations plaintiff's 7- and 12-year-old sons were coerced into making by an unlicensed County family therapist and a DA's office child abuse investigator. (*Id.* at 2, 10-11, 15.) Plaintiff was sentenced to 24 years in prison (suspended to 16 years) and served 9 years before being granted parole in 2001. (*Id.* at 7, 24-25.)

In 2008, plaintiff's sons voluntarily recanted, and in 2017—with the help of the Northern California Innocence Project—plaintiff moved to vacate his convictions under California Penal Code § 1473.7(a)(2), citing the recantations as newly discovered evidence of his actual innocence.² (*Id.* at 8, 25-27.) On January 17, 2018, noting the DA's Office had conceded the motion, the state court granted the motion without findings and vacated plaintiff's convictions. (*Id.* at 8, 27; ECF No. 1.15.) Plaintiff alleges that "[p]rior to the Court's ruling, the [DA's] Office conceded that [plaintiff's] conviction should be vacated and apologized for their fundamental role in his conviction." (ECF No. 1 at 8.)

In December 2019, plaintiff filed this action against the therapist, the investigator, their supervisors, and the County. (*Id.* at 1-2, 9.) As relevant to this dispute, plaintiff asserts several § 1983 causes of action: (1) a malicious prosecution claim against the therapist and the

² Penal Code § 1473.7, which went into effect on January 1, 2017, provides in relevant part:

(a) A person who is no longer in criminal custody may file a motion to vacate a conviction or sentence for either of the following reasons:

...

(2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

investigator, (2) a supervisory liability claim against their supervisors for failure to train and failure to supervise, and (3) a Monell claim against the County for the deficient policies, practices, and customs of its Alcohol and Drug Services department (where the therapist worked) and the DA's Office (where the investigator worked) that led to plaintiff's constitutional deprivations. (Id. at 29-36.) For the malicious prosecution claim against the County therapist, plaintiff alleges that the therapist used coercive and suggestive techniques to ask the children about being abused by plaintiff, reported the supposed abuse to Butte County Child Protective Services, and knowingly made false statements about him to the police, prosecutors, and the state court. (Id. at 12-14, 29.) For the malicious prosecution claim against the DA's Office investigator, plaintiff alleges that the investigator coerced plaintiff's children into making false accusations against him that led to his prosecution, and fabricated evidence submitted to the court that contributed to his harsh sentencing. (Id. at 16-22, 29.)

B. The Discovery Dispute

The present discovery dispute arises over a 12-page memorandum authored on June 22, 2017, by then-County Deputy District Attorney Matthew Taylor regarding plaintiff's then-pending motion to vacate his convictions ("the Taylor Memo" or "Memo"). (ECF No. 41 at 3.) The Memo was sent to County District Attorney Michael Ramsey, who has submitted a declaration stating that "[t]he Memorandum was prepared for the purposes of determining whether the District Attorney's Office should oppose Mr. Crabtree's Motion to Vacate." (ECF No. 41.10 at 2.) Former DDA Taylor also submitted a declaration averring that he joined the DA's Office in 2011 and was not involved in plaintiff's criminal prosecution; but in September 2017 he was assigned by a Senior Deputy District Attorney to review plaintiff's motion to vacate. (ECF No. 41.11 at 2.) According to Taylor, the Memo's purpose "was solely to analyze whether the [DA's] Office should oppose the Motion to Vacate and indirectly related to whether the [DA's] Office would have success if the Motion to Vacate was successful and the District Attorney chose to prosecute the case." (Id.)

Plaintiff learned of the Memo's likely existence after a January 2018 press conference the DA's Office held announcing his exoneration when DDA Taylor expressed to him that plaintiff's

1 case had “such an impact” on the DA’s Office that a memo was circulated as a “cautionary tale.”
2 (ECF No. 41.1 at 2.) In July 2020, plaintiff served document production requests on the County,
3 including a request for documents sent or authored by DDA Taylor related to plaintiff. (ECF
4 No. 41 at 5.) With its amended responses, the County provided a privilege log indicating that it
5 was withholding (among other documents) the Taylor Memo based on the work product doctrine
6 and deliberative process privilege. (*Id.* at 6.) Although the County revised its privilege log to add
7 slightly greater description of the Memo, it maintained its work product and deliberative process
8 claims throughout the parties’ written communications and meet and confer attempt, prompting
9 this motion.

10 Plaintiff believes the Memo details certain failures of the DA’s Office in prosecuting his
11 criminal case and led the DA’s Office to concede the motion to vacate. (ECF Nos. 41 at 3-4, 41.1
12 at 2.) Plaintiff characterizes the 2017 Memo as “a smoking gun” showing that the defendants
13 violated his constitutional rights in the 1991 prosecution, and as such he believes the Memo could
14 be “a central—if not dispositive—document” in his case. (ECF No. 41 at 4-5.) The County
15 responds that the Memo contains the analysis and opinions of one person with no involvement in
16 plaintiff’s prosecution 26 years earlier and is thus irrelevant to the present litigation. (*Id.* at 15.)

17 At plaintiff’s request, and with the County’s expressed willingness (*id.* at 15, 35), the
18 court ordered a copy of the Taylor Memo produced to the court for in camera review. Having
19 thoroughly inspected the Memo in camera, the court turns to the County’s work product and
20 deliberative process claims.

21 **DISCUSSION**

22 **A. Work Product Protection**

23 “The work product doctrine is not a privilege but a qualified immunity that protects
24 documents and tangible things from being disclosed during discovery that have been prepared by
25 a party or his representative in anticipation of litigation.” *Anderson v. Marsh*, 312 F.R.D. 584,
26 592 (E.D. Cal. 2015); *see In re Grand Jury Subpoena (Mark Torf/Torf Envtl. Mgmt.)*, 357 F.3d
27 900, 906 (9th Cir. 2004) (citing Fed. R. Civ. P. 26(b)(3)). However, by rule, such protection only
28 extends to (1) “documents and tangible things” (2) “prepared in anticipation of litigation or for

1 trial” (3) “by or for another party or its representative.” Fed. R. Civ. P. 26(b)(3). “The party
 2 asserting the work product privilege bears the burden of proving that the material withheld meets
 3 the standards established for material to be classified as work product.” Garcia v. City of El
 4 Centro, 214 F.R.D. 587, 591 (S.D. Cal. 2003). The County has not done so here, primarily
 5 because it has not shown that the Taylor Memo was prepared “by or for another party or its
 6 representative.”³

7 It is undisputed that the Memo was authored by Deputy District Attorney Taylor for
 8 District Attorney Ramsey. (ECF No. 41 at 3.) Neither of them is a named party to this litigation,
 9 and neither was acting as a representative of the County (or any other current defendant) in
 10 drafting or reviewing the Memo.⁴ (Id. at 18 (County stating that it came into possession of the
 11 Taylor Memo “when it gathered documents from the DA’s office when preparing initial
 12 disclosures” for this case)); see Shepherd v. Superior Court, 17 Cal. 3d 107, 122, 130 (1976)
 13 (“The district attorney is not an ‘attorney’ who represents a ‘client’ as such. He is a public
 14 officer, under the direct supervision of the Attorney General.”), overruled on other grounds by
 15 People v. Holloway, 33 Cal. 4th 96 (2004); Doubleday v. Ruh, 149 F.R.D. 601, 605-07 (E.D. Cal.
 16 1993).⁵

17 Seeming to acknowledge this gap, the County argues that this authorship element is
 18 nevertheless “met through the common interest doctrine.” (ECF No. 41 at 18.) As defendant
 19 correctly explains, “[t]his exception provides that disclosure to a third party does not waive work
 20 product protection where the third party shares a common interest with the disclosing party that is

21 ³ For the reasons discussed at the hearing, the court also concludes that the Memo was not
 22 prepared in anticipation of litigation.

23 ⁴ Although work-product protection can be applied to protect material from disclosure in a
 24 subsequent suit, the key requirement remains that the protected materials must have been
 25 “prepared by or for a party to the subsequent litigation.” F.T.C. v. Grolier Inc., 462 U.S. 19, 25
 (1983).

26 ⁵ The County argues briefly in a footnote that Doubleday does not apply because that case
 27 addressed the disclosure of prosecutors’ documents prepared during the prior criminal trial,
 28 whereas the Taylor Memo was created long after Mr. Crabtree’s trial. This is a distinction
 without a difference. The reasoning of Doubleday applies equally in concluding that the Taylor
 Memo was not drafted by or for the County or any other party to this action.

adverse to that of the party seeking the discovery. (Id. (emphasis added), citing United States v. Bergonzi, 216 F.R.D. 487, 495–96 (N.D. Cal. 2003); McMorgan & Co. v. First California Mortg. Co., 931 F. Supp. 703, 709 (N.D. Cal. 1996).)

By defendant’s own description, the common interest doctrine applies in circumstances totally absent from this case. Plaintiff here has made no claim of waiver through third-party disclosure such that the common interest doctrine might come into play as an exception to the general waiver rule. Defendant cites no case supporting the use of the common interest doctrine to impute one entity’s authorship of a given work product to another separate entity. The fact that the DA’s Office and the County share many common interests in relation to this case brings defendant no closer to showing that the County or its representative authored the Taylor Memo.

The County advances no alternative argument for how the authorship element of the work product doctrine is satisfied for the Memo. Accordingly, the court overrules the County’s work-product objection.

B. Deliberative Process Privilege

The deliberative process privilege, which is qualified, is intended to protect the quality of agency decisions by promoting frank and independent discussion among those responsible for governmental decision-making. See, e.g., F.T.C. v. Warner Commc’ns Inc., 742 F.2d 1156, 1161 (9th Cir. 1984); Carter v. U.S. Dep’t of Commerce, 307 F.3d 1084, 1089 (9th Cir. 2002) (“The purpose of this privilege is to allow agencies freely to explore possibilities, engage in internal debates, or play devil’s advocate without fear of public scrutiny.” (internal quotation omitted)). If a document is both “predecisional” and “deliberative” in nature, the privilege applies. Warner, 742 F.2d at 1161. Purely factual matter is not deliberative, but the privilege applies if the factual matter cannot be segregated from the deliberative material within the document. Id.

As a qualified privilege, a litigant may still obtain discovery of materials protected by the privilege if the need for the materials outweighs the governmental interest in keeping the decision-making process confidential. In deciding whether to override the privilege and allow discovery, there are four factors to be considered: “1) the relevance of the evidence; 2) the availability of other evidence; 3) the government’s role in the litigation; and 4) the extent to

1 which disclosure would hinder frank and independent discussion regarding contemplated policies
 2 and decisions.” Karnoski v. Trump, 926 F.3d 1180, 1206 (9th Cir. 2019) (per curiam) (quoting
 3 Warner, 742 F.2d at 1161). Plaintiff does not dispute that the privilege applies to at least some
 4 portion of the Taylor Memo,⁶ but plaintiff argues that under the Warner factors his need for the
 5 Memo overrides the County’s interest in non-disclosure. (ECF No. 41 at 11.)

6 ***1. Relevance***

7 Plaintiff contends that the Taylor Memo is highly relevant, believing that it details “the
 8 County’s review and evaluation of its actions leading to Plaintiff’s wrongful conviction,” or as “a
 9 review and evaluation of its handling of Mr. Crabtree’s criminal case.” (ECF No. 41 at 12, 13.)
 10 Plaintiff likens his request for this Memo to requests in other cases for internal investigation
 11 documents concerning the incidents at issue in those suits. (Id.) Plaintiff is correct that courts in
 12 this district have often overruled deliberative process objections asserted for documents created as
 13 part of an internal affairs investigation of the challenged incident—most typically police
 14 department investigations of alleged officer misconduct. See Mayfield v. Cty. of Los Angeles,
 15 No. 2:19-CV-1298-FMO-SKX, 2020 WL 2510649, at *1 (C.D. Cal. Mar. 20, 2020) (collecting
 16 cases and rejecting privilege claim for documents related to County’s internal investigation of
 17 alleged misconduct by County employee). Their rationale for rejecting the privilege is that
 18 communications regarding such internal affairs investigations “are not designed to contribute to
 19 the formulation of important public policy and are routinely generated.” Id. (quoting Swartwood
 20 v. Cty. of San Diego, No. 12CV1665-W BGS, 2013 WL 6670545, at *3 (S.D. Cal. Dec. 18,
 21 2013); see Duenez v. City of Manteca, No. 2:11-CV-1820 LKK AC, 2013 WL 684654, at *12
 22 (E.D. Cal. Feb. 22, 2013) (“Defendant cites to no controlling authority applying the deliberative
 23 process privilege to the [internal investigative] documents sought by way of this RFP in the
 24 context of a civil rights case.”).

25 The court does not find this backdrop persuasive in assessing the relevance of the Taylor
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27 ⁶ Although plaintiff at first maintained that the County did not adequately assert the privilege, as a
 28 procedural matter, plaintiff confirmed at the hearing that DA Ramsey’s declaration attached to the
 parties’ joint statement sufficiently invokes the privilege. (ECF Nos. 41 at 10-11, 41.10.)

1 Memo, however, because it is not the same sort of investigative document routinely generated in
2 relatively soon after the event in question. Cf. Anderson v. Marsh, 312 F.R.D. 584, 593 (E.D.
3 Cal. 2015) (noting in the context of a work-product analysis that police department internal
4 investigations are routinely created, and their purpose “is to determine if the officer was legally
5 justified in shooting, complied with departmental policy, and if any action should be taken by the
6 immediate supervisor”).

7 After thorough in camera review, the court can confidently say that the sole reason for the
8 Memo’s creation was to decide whether the DA’s Office would oppose plaintiff’s motion to
9 vacate his conviction. The Memo definitively does not read as an internal investigation into the
10 way the case was handled some 26 years prior. Ironically, a portion of the Memo (which the
11 County does not object to disclosing) falls under a heading entitled “Internal Investigation,” but
12 that section simply chronicles DDA Taylor’s contemporaneous conversations with Mr. Crabtree,
13 his sons, and his ex-wife to assess the strength of the case in light of the new evidence. (Memo
14 at 7-9.) The portions of the Memo that the County remains unwilling to disclose contain DDA
15 Taylor’s opinion of whether—in light of the recantations—there was enough evidence to vacate
16 the conviction under Penal Code § 1473.7, and thus necessarily (and unsurprisingly) include
17 discussion of the now-apparent weaknesses in the prosecution’s original case, with the advantage
18 of hindsight and a somewhat improved understanding of questioning minors about sensitive
19 subjects. But none of those opinions and analysis shed light on whether the County in the 1990s
20 was aware of, or deliberately indifferent to, unconstitutional practices of its employees; or
21 whether by the standards of the day, the therapist’s and investigator’s techniques were coercive.
22 They are simply one attorney’s views of the evidence underlying the conviction, offered in the
23 context of assessing whether to defend that conviction decades later. The deliberative portions of
24 the Taylor Memo thus are not relevant to plaintiff’s present suit, and this factor weighs against
25 ordering its full disclosure.

26 ***2. Availability of Other Evidence***

27 Plaintiff argues that there is no evidence from any other source similar to the Taylor
28 Memo, that is “a potentially candid assessment by the County of its own failures in Plaintiff’s

prosecution.” (ECF No. 41 at 13.) For the reasons just discussed, this statement would carry more force if the Taylor Memo had been drafted by or for the County shortly after the prosecution occurred. As it stands, it is one attorney’s view of how the evidence supporting plaintiff’s conviction has weathered over several decades. As a practical matter, the court sees no reason that plaintiff could not today obtain another person’s—even another criminal attorney’s—opinion of the same documentary evidence DDA Taylor reviewed (evidence that the County has already produced to plaintiff), and offer his or her views on how the techniques used to obtain the children’s accusations do or do not satisfy today’s standards for questioning minors. The fact that DDA Taylor was a County employee at the time he authored the Memo does not make his opinion more probative than an outside expert’s view, which would also be offered from the vantage of many decades post-prosecution. Accordingly, the court also weighs this factor against ordering the Memo’s full disclosure.

3. *Government’s Role in the Litigation*

Often, “[t]he fact that a governmental entity’s action is the focal point of litigation weighs against upholding the deliberative process privilege.” Thomas v. Cate, 715 F. Supp. 2d 1012, 1028 (E.D. Cal. 2010) (collecting cases), order clarified, No. 1:05-CV-01198-LJO-JMD-HC, 2010 WL 797019 (E.D. Cal. Mar. 5, 2010). Indeed, in a notable recent case, the Ninth Circuit concluded without discussion that this third factor favored disclosure where “the government—the Executive—is a party to and the focus of the litigation.” Karnoski, 926 F.3d at 1206 (vacating discovery order to produce documents concerning the President’s and Secretary of Defense’s deliberations over new policy banning transgender individuals from military service).

Here, the policies of Butte County and the conduct of certain of its employees are certainly the focus of this suit. But cases like this one—where the deliberative document sought was neither prepared by the defendant government entity, nor prepared in aid of the policies being challenged in the suit—require a more nuanced approach to this factor. The government’s role in the litigation is an important factor because the deliberative process privilege “was fashioned in cases where the governmental decisionmaking process is collateral to the plaintiff’s suit.” See In re Subpoena Duces Tecum Served on Office of Comptroller of Currency, 145 F.3d 1422, 1424

(D.C. Cir. 1998) (citing as examples cases where “shareholders sought Comptroller’s bank examination reports to prove fraud charges against corporation” and where a “petitioner wanted deliberative materials to establish a defense to an unfair labor practice charge”). In cases where a plaintiff is seeking a deliberative document prepared by or for the defendant government entity in aid of the challenged decision, the decisionmaking process is necessarily central to the suit, and it makes good sense that this factor weighs in favor of disclosure. See, e.g., Karnoski, 926 F.3d at 1206; Thomas v. Cate, No. 1:05-CV-01198-LJO-JMD-HC, 2010 WL 797019, at *2 (E.D. Cal. Mar. 5, 2010) (upholding deliberative process privilege where “the Governor’s decision-making process [was] at issue” and “[t]he Governor [was] responsible for the alleged violation of Petitioner’s constitutional right”); Byrd v. Jossie, No. CV 08-3054-CL, 2008 WL 4274432, at *4 (D. Or. Sept. 17, 2008) (in rejecting privilege claim in Administrative Procedure Act case against agency, noting without further analysis that government was a party to the action).

But in this case, plaintiff’s suit does not allege any impropriety in the District Attorney’s 2017–2018 decision not to oppose plaintiff’s motion to vacate his conviction—the decision in aid of which the Taylor Memo was created. Rather, plaintiff is suing over the conduct and policies of Butte County and its officials in the early 1990s. The DA’s decision not to oppose the motion to vacate is not exactly “collateral” to plaintiff’s suit, because plaintiff is still suing the County for its employees’ conduct addressed (at least to some degree) in the Taylor Memo; but nor is the DA’s non-opposition decision in any way central to plaintiff’s suit, since neither the non-opposition decision nor the Taylor Memo could have contributed to setting the County’s 1990s policies or practices regarding counseling or investigation techniques. Accordingly, the court finds this factor neutral.

4. Chilling Effect of Disclosure

This final factor manifests one of the main purposes of the privilege: “to allow agencies freely to explore possibilities, engage in internal debates, or play devil’s advocate without fear of public scrutiny.” Carter, 307 F.3d at 1089; see Coastal States Gas Corp. v. Dep’t of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980) (the deliberative process privilege “serves to assure that subordinates within an agency will feel free to provide the decisionmaker with their uninhibited

1 opinions and recommendations without fear of later being subject to public ridicule or criticism”).

2 The court concludes that this factor weighs heavily against disclosure of the Taylor
3 Memo, as disclosure—even under a protective order—would necessarily reduce the quality of the
4 DA’s Office’s decisions. See Warner, 742 F.2d at 1161 (“The ultimate purpose of the privilege is
5 to protect the quality of agency decisions.”); see also Dep’t of Interior v. Klamath Water Users
6 Protective Ass’n, 532 U.S. 1, 8-9 (2001) (“The deliberative process privilege rests on the obvious
7 realization that officials will not communicate candidly among themselves if each remark is a
8 potential item of discovery and front page news, and its object is to enhance the quality of agency
9 decisions, by protecting open and frank discussion among those who make them within the
10 Government.” (internal quotation marks and citations omitted)).

11 In camera review reveals that the Taylor Memo is almost exclusively devoted to the
12 question of whether to oppose Mr. Crabtree’s motion to vacate. Answering such a question
13 necessarily requires a frank and candid assessment of the evidence on-hand when the case was
14 prosecuted and the newly discovered evidence (i.e., plaintiff’s son’s recantations)—as well as a
15 recommendation of whether the County would be justified in opposing the motion. Disclosure of
16 an internal memo like this one results in a very high, if not the highest, degree of intrusion into a
17 government agency’s deliberations. See L.H. v. Schwarzenegger, No. S-06-2042 LKK/GGH,
18 2007 WL 2009807, at *7 n.12 (E.D. Cal. July 6, 2007) (contrasting production of agency budget
19 requests which “intrude[] minimally” with production of “internal emails[] and memoranda”
20 which “may result in far greater intrusion”). In Warner itself, where the memoranda at issue
21 contained “[a]nalyzes and recommendations [that] play a critical role in the Commission’s
22 decision whether or not to challenge a merger,” the Ninth Circuit held that the memoranda “go to
23 the heart of the deliberative and policy-making processes” and their compelled disclosure “almost
24 certainly injures the quality of agency decisions.” 742 F.2d at 1161-62 (“It chills frank discussion
25 and deliberation in the future among those responsible for making governmental decisions.”)

26 So too with the Taylor Memo. Its analysis and recommendation on how to respond to the
27 vacatur motion played a critical role in the DA’s decision whether to challenge the motion.
28 District attorney’s offices must make such prosecutorial decisions day-in and day-out, and it is in

1 the public's best interest to allow line attorneys to voice their views on such matters openly and
2 honestly to their superiors, without fear that putting pen to paper will expose them or their office
3 to future embarrassment or liability. Cf. Coastal States, 617 F.2d at 869 (finding no chilling
4 effect where the "documents do not contain subjective, personal thoughts on a subject, so public
5 knowledge of the documents will not subject the writer either to ridicule or criticism," and noting
6 that none of the requested documents required any degree of "candor" or frankness in their
7 preparation). The court disagrees with plaintiff's contention that disclosing the full Memo subject
8 to a protective order would sufficiently mitigate these concerns. The knowledge that a memo like
9 this could be released to hypothetical plaintiffs and their counsel suing one's employer is too
10 likely to lead the drafting attorney to rose-color the views presented therein, if indeed the office
11 deems it wise to continue soliciting such opinions in writing.

12 5. *Conclusion*

13 Because the recommendations and analyses contained in the Taylor Memo are not the
14 "smoking gun" plaintiff believes them to be, but rather one attorney's professional opinion of the
15 merits of plaintiff's motion to vacate, the memo is not relevant to the litigation; the DA's Office
16 deliberation for which the memo was created is not the focal point of this suit; and full disclosure
17 carries too great a risk of sacrificing candor in prosecutorial decision-making. Even assuming
18 that similar analyses of the evidence underlying plaintiff's wrongful conviction may be difficult
19 to obtain elsewhere, that would not, alone, outweigh the above three factors.

20 **CONCLUSION**

21 Although the court does not find full disclosure warranted, most of the Memo contains
22 factual matter that can be segregated from the deliberative material within the document. See
23 Warner, 742 F.2d at 1161; EPA v. Mink, 410 U.S. 73, 87-92 (1973) (purely factual material
24 contained in deliberative memoranda and severable from its context must be disclosed, unless
25 such factual material is so intertwined with the policymaking process that its disclosure would be
26 inconsistent with the purposes of the privilege). The County does not object to disclosing to
27 plaintiff the redacted version of the Memo submitted for in camera review. The court agrees that

28 ///


1 the deliberative-process privilege applies to the proposed redacted materials and therefore orders
2 disclosure of the nonredacted portions of the Taylor Memo.

3 Accordingly, IT IS ORDERED that:

- 4 1. Plaintiff's motion to compel (ECF No. 39) is DENIED IN PART and GRANTED IN
5 PART;
- 6 2. Within seven (7) days of the date of entry of this order, defendant Butte County shall
7 produce to plaintiff a copy of the June 22, 2017 memorandum authored by Matthew
8 Taylor reflecting the same redactions previously submitted to the court. The redactions
9 shall be made in a manner that makes it apparent where material has been redacted.

10 IT IS SO ORDERED.

11 Dated: December 11, 2020

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13 KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE

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